

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
KENNETH J. KELLEHER,

Plaintiff,

- v -

CITY OF NEW YORK,

Defendant.
-----X

ORDER

CV-06-2702 (FB)(VVP)

As permitted by the court's order dated January 10, 2007, the plaintiff has provided a basis for the relevance of the information sought in his document requests 13 and 14. Those requests sought documents relating to the criteria for promotions for all ranks from Deputy Inspector and above, and documents concerning average overtime pay earned by employees holding those ranks during the period from July 6, 2004 to the present. The plaintiff contends that since his injuries have rendered him unable to return to work at his present position and since he had intended to remain in his position and to obtain promotions, the information has relevance to his claim for future lost earnings. The defendant continues to object, arguing that any information concerning future lost earnings for ranks above the rank held by the plaintiff is irrelevant because any claim based on his possible promotion is purely speculative. The defendant has provided no authority, however, for the proposition that, as a matter of law, a plaintiff may not recover future lost earnings calculated on the basis of potential promotions. Since there is no dispute that future lost earnings is an available item of damages for the plaintiff's injuries here, information concerning the plaintiff's ability to obtain promotions, and the earnings he could expect if he did so is reasonably calculated to lead to evidence admissible at trial. Accordingly, the defendant's objection to providing the information is overruled, and the defendant shall produce the requested information within 20 days. (This ruling applies to document request 12, as well, to which the defendant now asserts the same objection it earlier made with respect to document requests 13 and 14.) This decision is not intended to be, and should not be cited as, a determination that the plaintiff is indeed entitled to receive future lost earnings calculated on the basis of potential promotions. Rather, this ruling is made simply as a

matter of discovery as the court has found a sufficient basis for permitting discovery concerning those matters on the present record before the court.

SO ORDERED:

Viktor V. Pohorelsky

VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
January 24, 2007